

MINUTES
KITTY HAWK TOWN COUNCIL
June 6, 2016
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Public Comment
5. Consent Agenda
 - a.) Approval of April 18, 2016 and May 2, 2016
 - b.) Fiscal Year 15-16 Budget Amendment #7
 - c.) FY 15-16 Budget Amendment #8
 - d.) Fiscal Year 15-16 Audit Contract and Commitment for Future Audits
 - e.) Amendment Number One to Interlocal Agreement/Dare County and Towns of Duck and Kill Devil Hills
 - f.) Adoption of Capital Project Ordinance Amendment
 - g.) Special Obligation Bond Closing Documents for Beach Nourishment Funding
6. Items Removed from the Consent Agenda
7. Public Hearings
 - a.) Fiscal Year 2016-17 Budget
 - Adoption of Fiscal Year 2016-17 Budget Ordinance and Budget Documents
 - b.) Conditional Use Permit: Jetsurf NC, application for a CUP to allow a kayak rental business at 4622 N. Virginia Dare Trail. (*Cancelled at the request of the applicant.*)
8. Planning
 - a.) Call for Public Hearing/Text Amendment: Applicant proposes to amend 42-419(3) to eliminate the requirement for a 50 foot buffer between the Planned Commercial Development district and any non-residential zoning district.
9. New Business
 - a.) Appointments to Town Boards and Committee
 - b.) Feral Cat Ordinance Discussion
 - c.) A Resolution Opposing North Carolina HB 1122 That Would Limit Marine Net Fishing
10. Reports/General Comments from Town Manager
11. Reports/General Comments from Town Attorney
12. Reports/General Comments from Town Council
 - a.) Thank You to Staff
 - b.) Amicus Brief
13. Public Comment
14. Adjourn

COUNCILMEMBERS PRESENT:

Mayor Gary Perry, Mayor Pro Tem Craig Garriss, Councilman Ervin Bateman, Councilwoman Lynne McClean and Councilman Jeff Pruitt

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STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Steve Michael, Finance Officer Liliana Noble, Management Assistant Melody Clopton, Town Planner Rob Testerman, Fire Chief Lowell Spivey and Public Works Director Willie Midgett

1. CALL TO ORDER

Mayor Perry called this meeting to order at 6:00 p.m.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

Following a moment of silence the Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

MPT Garriss made a motion, seconded by Councilman Bateman, to approve the agenda. The vote was 5-0.

4. PUBLIC COMMENT

Mayor Perry asked if there was anyone in the audience who wished to make comments on the proposed feral cat ordinance that council will be discussing later in the meeting. A public hearing is not being held and this is a good time to make any comments on the subject.

No one came forward to speak.

5. CONSENT AGENDA

a.) Approval of April 18, 2016 and May 2, 2016 Council Minutes. *(An affirmative vote for the consent agenda will approve these minutes.)*

b.) Fiscal Year 15-16 Budget Amendment #7. This amendment will recognize and appropriate the \$1,000 donation to the fire department that council approved at the May 2, 2016 council meeting. It will be used towards the purchase of an automated external defibrillator (AED) for Ocean Rescue. *(An affirmative vote for the consent agenda will approve this amendment.)*

c.) FY 15-16 Budget Amendment #8. This amendment is for the police department's budget and will transfer \$10,000 from vehicle supplies and materials to maintenance and repairs of equipment for \$5,000 and supplies for \$5,000 to cover a projected shortfall. *(An affirmative vote for the consent agenda will approve this amendment.)*

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d.) **Fiscal Year 15-16 Audit Contract and Commitment for Future Audits.** This contract is in the amount of \$18,500 for FY 15-16 and with a commitment from the Town for Fiscal Years '16-17 and '18-19 the amount will not increase. *(An affirmative vote for the consent agenda will approve this contract and approve the three year commitment.)*

e.) **Amendment Number One to Interlocal Agreement with Dare County and the Towns of Duck and Kill Devil Hills.** This agreement amends the project funding amount as a result of the lower bid with Great Lakes Dredging Company for beach nourishment. The bid came in at \$18,855,878. *(An affirmative vote for the consent agenda will approve this Interlocal Agreement.)*

f.) **Adoption of Capital Project Ordinance Amendment.** This amendment to the original ordinance reflects the lower bid amount from Great Lakes Dredging Company for beach nourishment. The Project Ordinance is in the amount of \$18,941,128. *(An affirmative vote for the consent agenda will approve this amendment.)* **(Ordinance No. 16-06)**

g.) **Special Obligation Bond Closing Documents for Beach Nourishment Funding.** The documents include: (1) Bond Order; (2) Issuance Resolution; (3) Specimen Bond; (4) Certificate of Officials of the Town Regarding Resolutions, no Litigations, Signature Identification and Related Matters; and, (5) Federal Arbitrage and Tax Certificate. These documents are needed by Parker and Poe, Bond Counsel, for the closing on June 10, 2016. *(An affirmative vote for the consent agenda will approve these documents.)*

Councilman Bateman made a motion, seconded by Councilwoman McClean, to approve the consent agenda. The vote was 5-0.

Mayor Perry added that with the passage of the consent agenda council has formally accepted the special obligation bond. All the paperwork goes before the LGC in a couple of days and by the 10th is settled. The town is committed to beach nourishment.

6. ITEMS REMOVED FROM THE CONSENT AGENDA

No items were removed from the consent agenda.

7. PUBLIC HEARINGS

a.) Fiscal Year 2016-17 Budget and Adoption of Fiscal Year 2016-17 Budget Ordinance and Budget Documents

MPT Garriss made a motion to go into public hearing. It was seconded by Councilwoman McClean and passed unanimously, 5-0.

Manager Stewart reviewed the proposed \$7,949,289 budget. There is no tax rate increase, funds for the beach nourishment project are included, maintains funding for exceptional and expected levels of service for residents and it continues the tradition of maintaining healthy reserves and a \$3,500,000 emergency reserve funds.

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Mayor Perry asked council and the public if anyone wishes to speak or comment on the budget. Hearing no questions or comments and seeing no one come forward, **Councilman Bateman made a motion to return to regular session. The motion was seconded by Councilwoman McClean and passed unanimously, 5-0.**

Councilman Pruitt made a motion to adopt the Fiscal Year 2016-17 budget ordinance and related documents as presented. Councilman Bateman seconded and the motion passed unanimously, 5-0. (Fiscal Year 17-18 Budget Ordinance is Ordinance No. 16-07)

b.) Conditional Use Permit: Jetsurf NC, application for a CUP to allow a kayak rental business at 4622 N. Virginia Dare Trail. (Cancelled at the request of the applicant.)

Answering a question posed by the mayor if this will be rescheduled Planner Testerman replied no, the applicant has withdrawn the application.

8. PLANNING

a.) Call for Public Hearing/Text Amendment: Applicant proposes to amend 42-419(3) to eliminate the requirement for a 50 foot buffer between the Planned Commercial Development district and any non-residential zoning district.

MPT Garriss made a motion, seconded by Councilwoman McClean, to set a public hearing at the Town Council meeting on July 5, 2016 to consider the proposed text amendment of Section 42-419(3) minimum buffer required in a Planned Commercial Development district. The motion passed unanimously 5-0.

Mayor Perry reported he asked Rob to make available for council the specific differences between a PUD and a PCD and why this was set this way in the first place. That way council will not undo something that was intentional and had a purpose they are unaware of.

9. NEW BUSINESS

a.) Appointments to Town Boards and Committee

Councilwoman McClean made a motion for Bryan Parker to be reappointed as a regular member on the planning board with a term to expire in June 2018. Councilman Bateman seconded the motion and it passed unanimously, 5-0.

MPT Garriss made a motion for Dusty Rhodes to be appointed as a regular member to the vacant position on the planning board. Term to expire June 2018. Councilwoman McClean seconded and it passed unanimously, 5-0.

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Councilman Pruitt made a motion, seconded by Councilwoman McClean, for Janis Collins to be appointed to Dusty Rhodes' vacancy as an alternate on the planning board. Term to expire June 2017. The vote was unanimous, 5-0.

Councilwoman McClean made a motion to reappoint John Richeson as Chairman and Bryan Parker as Vice-Chairman of the Planning Board with terms of office expiring in June 2017. The motion was seconded by MPT Garriss and was unanimously approved, 5-0.

Councilman Pruitt made a motion for David Morton and Charlotte Walker to be reappointed as regular members and Natalie Smith to be reappointed as an alternate member on the Board of Adjustment. The terms of office are until June 2019. The motion was seconded by Councilman Bateman and approved unanimously, 5-0.

Councilwoman McClean made a motion for Christine Buckner and Rita Phillis to be reappointed, and Linda Barnhart to be appointed, to the Recreation Committee. The terms of office are until June 2020. The motion was seconded by MPT Garriss and unanimously approved 5-0.

Councilwoman McClean made a motion for Paul Henrique to be appointed to the unexpired term of Ricky Brake on the Recreation Committee with a term of office to expire in June 2018. The motion was seconded by Councilman Pruitt and unanimously approved 5-0.

b.) Feral Cat Ordinance Discussion

***Stewart:** This ordinance is similar to an ordinance that was adopted by Dare County. My first month on the job I was invited to a Sea Dunes Homeowners Association meeting and they expressed their concern with the number of feral cats hanging out on their property and on the Town's property at the Bath House. Public works tried to eliminate some of the cats by putting out new trash cans with better lids and putting up signs that say no feeding of animals. Not just cats but any animal in general.*

After the meeting there were meetings with other residents that have been taking care of some of the feral cats. We have been trying to deal with it behind the scenes however I think at this point it is something council needs to address as far as the control of the feral cat colonies.

If there are going to be feral cat colonies this ordinance states the colonies are to be maintained and somebody will oversee them. It regulates the feeding of the cats to half a cup of dry food per cat, per day, to not attract other cats. If you are going to maintain a colony you have to have permission from property owners within 100 yards of where the cats are fed. Shots, spay and neutering are addressed. If there is an issue with a cat we will know who that cat caregiver is and the police department can talk with them and see if they are following the ordinance.

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We tried to work it out between neighbors but some of the residents simply do not like, or want, to deal with the cats. With that being said I can answer any other questions on the specifics of the ordinance and John Graves with the SPCA is here this evening to help answer any questions.

Perry: *Before Mr. Graves comes up I have a couple of questions. It talks about within a 100 yards of a feeding station. Around Kitty Hawk that would be nowhere. You would have to have a pretty big lot to have a feeding station so we recognize that that was intended?*

Stewart: *Under Section 4-15 (5) "feeding stations and shelters shall be no less than a 100 yards from property for which permission to maintain a colony has not been obtained". So you would have to get permission, and you are correct, it would be probably be six or seven properties to keep within 100 yards.*

Perry: *A normal size yard or lot in Kitty Hawk would not be able to do this unless he had permission from every adjacent resident. I wanted to make sure we got that in the record.*

The other thing this started over was the cats are roaming on other people's property and they do not want them on their property. I see that "colony location shall be upon property owned by the caregiver or upon property for which the caregiver has written permission from the property owner". Does that mean they have to be contained within there? Is that strong enough to keep the free roaming cats from going on people's property?

Stewart: *That's where the enforcement becomes a bit challenging.*

Perry: *Steve?*

Michael: *When I read it I saw there was no enforcement except if they go on other people's property. There is a section that you can call animal control and they can remove the feral cats from that individual's property and not the caregiver's property.*

Perry: *So there is a mechanism. If there are 20 or 30 cats around someone can call animal control and they'll come take them away. Then do they give them back? That's another issue.*

We had information from the people that really started this and they were talking about the definition of feral cat. They think it should say "feral cats, free roaming cats, stray cats". In other words cats that are not domestic or owned cats. Do we need to add that to the ordinance in order to make this clear?

Michael: *It says not socialized to humans. I'm not quite sure how you determine that but it says not owned. I do not think for what you are trying to do that you have to include it because if a cat has an identified owner, and has an identification, they are going to contact the owner. If they cannot identify the cat it is going to be treated just like a feral cat I would guess.*

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Perry: *Then there is a maximum number of cats allowed per location. It is spelled out in here. That is a lot of cats.*

Stewart: *Yes and I believe the county ordinance allows a lot more cats per acre. That is just the number I picked out as to the number of cats you are allowed per acre.*

Perry: *I would not want that many cats. Then under 4-15 (a) Cat colonies, Subsection 8, it talks about "feeding stations and feeding of feral cats shall not take place on Town owned property. Colonies maintained on properties within 100 yards of Town owned property do not require written permission". I disagree and think they should have written permission from the Town. It is not allowed on federal land. Why should they be permitted on Town property? We need to get a better handle on that especially around the Bath House. Does anyone else disagree with that?*

There was a council consensus to require Town permission.

Bateman: *I don't think this is enforceable. I mean you are putting teeth into something that I don't know needs teeth.*

It's like the dog issue. Do you remember the dog issue we had in Kitty Hawk? That was the biggest fiasco you have ever seen in your life and now all of a sudden you're putting teeth into this ordinance. Talk to me.

Perry: *Right now we don't have any way to enforce anything and this is an attempt to try to meet both interests. We need an ordinance to allow our staff to have some kind of control over where the cats roam free. And there are too many.*

Bateman: *I agree but it just seems to me a lot of this is unenforceable.*

Perry: *A disagreement occurred and there was no way to settle it without some sort of an ordinance to give staff and the SPCA something to work with. They had to do it in Hatteras and I heard about one lady there who had around 350 cats.*

Garriss: *I have ridden through some of the areas and I would not want that many cats around me. I do not blame these folks for complaining one bit.*

Pruitt: *I think it's up to us to try to help these people and also work with the SPCA. Andy has worked hard on this and I think we need to continue to try to work together. I am interested in hearing what Mr. Graves has to say.*

John Graves, Director, Outer Banks SPCA, Dare County Animal Services: *I completely missed this meeting on my radar until about 3:30 today so a lot of what I say will be from memory and experience.*

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The 100 yard rule is something the county ordinance has in it. This ordinance is 85%, at this point, written by me and in line with trying to strike a balance between homeowners and feral cat caregivers. The most important thing for me was putting in requirements of the colony caregivers. Reasons we continue to have such a population boom is because we have such a high resource area with temperate climate and over feeding of feral cats from the caregivers. People are good natured and have the best intentions but they actually end up overfeeding which increases their resources which increases the population. That is part of the reason for the explosion.

Section 4.15 is so important to me as far as establishing and giving them guidelines to adhere to because a lot of them just don't know. These guidelines actually came from a national organization known as Alley Cat Allies and this is what they recommend for their colonies. We tweaked it a bit to make it more efficient for us as far as feeding for two hours in a day and the 100 yard rule is set up to protect all of the neighbors. I mean you are going to have areas where people are within four, five or six lots and do want to have a feral colony nearby and then you're going to have areas where they do not. That's why the 100 yard rule is in effect. The way you all wrote it is much better. It is actually 100 yards from the feeding station, not necessarily from a cat because obviously cats don't stay put in one spot. Having that 100 yard rule is to help everyone in the area. Cats will hopefully stay within that and you have permission from everyone there.

If you don't want them there then we have to move them. There are still public nuisance ordinances that we can follow and this helps establish what a public nuisance is. If someone is not adhering to all these guidelines and has 44 cats on an acre and it's bothering the person right next door, within that 100 yards, then we have something to work with. I will not say the enforcement is easier or perfect because it's definitely not. It is going to be very difficult but at least it's something on the books. Anything you put out there is going to be hard to enforce with cats because they are migratory. They move around a lot but putting something in place is better than nothing.

Once these guys are impounded, just so you know, we hold all of our cats for 8 days, including feral cats. This allows caregivers an opportunity to come forward and reclaim their cats. We want to make sure people are given ample time to get their own cat back if their cat is caught in a trap.

I also agree with you about having the Town's permission. If you are going to have permission from homeowners I think it makes perfect sense to have the Town's permission as well.

Bateman: *How did this work for you in Hatteras?*

Graves: *We have not had any calls in relation to this yet. The only calls we received were people that were already in motion of adjusting to this. All the feral cat people knew it was coming. We kept all of the caregivers in the loop and asked that they prepare themselves.*

There is one woman in particular who is constantly moving cats, trying to find the right spot and she seems to have now. These caregivers just want the best for their cats and of course they get frustrated when they find out they have to move a colony but they do it. No problem.

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When this ordinance was written for the county, before it went up for a vote, Feline Hope and Friends of Felines in Hatteras reviewed it and they were as happy as they possibly could be with it. And the commissioners were happy. The original version had a lot of registration requirements and we told them we do not have the manpower to register and monitor the colonies. It is a full time job, especially when you get down to Hatteras, if we required registration. That is why there is a requirement of everyone who is caring for a colony to maintain their own records and make them available upon request.

Pruitt: *When the cats are trapped they are neutered and the ears notched before being returned to a caregiver. Is that correct?*

Graves: *We do not trap for TNR purposes. We do help caregivers by loaning them traps or if somebody calls and says they have a feral cat that they want to get fixed then we will help them in that respect. But we do not have the manpower or finances to go out and trap every cat in Dare County and spay or neuter them.*

We also have cat stops that we use quite frequently in the shelter. It is like an ultrasonic cat deterrent. I think Sea Dunes had a couple and then they disappeared. There is a woman in Manteo who recently had a lot of luck with hers. We put one in her yard because her neighbors were building a cat enclosure for feral cats and they were feeding out there. We have had varying results and we have a lot of different approaches to this. It is a big problem. It is definitely the biggest and most reoccurring problem that we face.

Councilman Pruitt asked if Mr. Graves will be able to work with the ordinance he helped write and if he thought it will help with some of the problems. Mr. Graves replied he will be able to work with the ordinance and absolutely believes it will help with the problems in Kitty Hawk.

Bateman: *The cats hang around restaurants because it's free food and they take care of any rodent problem.*

Graves: *It is amazing what line of defense a managed cat colony provides against other feral cats moving in. You mentioned rodents. I knew a local business owner who had all of his cats removed from around his restaurant and about six months later he was calling back asking if he could get them returned. He went to throw the trash away one time and discovered a rat bigger than his head. Cats were brought back and no more problems. The best thing about cats is they don't go inside. I can't say the same thing about rats or mice.*

I also know of a road in Duck that had a feral cat colony at the end of it. All the other houses around that road had an issue one summer with their duct work being destroyed by raccoons and other small pests. The road with the cat colony was unaffected because the cats kept the pests at bay.

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After hearing councilmembers are satisfied with moving forward, **Mayor Perry made a motion to approve the feral cat ordinance with the change to require Town permission just like everybody else. MPT Garriss seconded the motion and it passed unanimously, 5-0. (Ordinance No. 16-08)**

Council thanked Mr. Graves for sharing his knowledge and expertise on feral cat colonies.

c.) A Resolution Opposing North Carolina HB 1122 That Would Limit Marine Net Fishing.

This resolution opposes the House Bill and any other measure that would arbitrarily impair the livelihood of North Carolina's hard working commercial net fishermen.

Councilman Pruitt made a motion to adopt the resolution opposing North Carolina House Bill 1122 that would limit Marine net fishing. Councilman Bateman seconded. Mayor Perry said this bill has been introduced in the North Carolina legislature and proposes to put a referendum on the ballot in the 2016 general election that would limit marine net fishing purportedly to protect saltwater finfish, sailfish and other marine animals from unnecessary killing, overfishing and waste. **The vote to adopt the motion was 5-0.**

10. REPORTS/GENERAL COMMENTS FROM TOWN MANAGER

There were no comments or reports from the manager.

11. REPORTS/GENERAL COMMENTS FROM TOWN ATTORNEY

Attorney Michael noted there are only fourteen condemnations left and six of those are for properties that are empty, unbuildable lots. Mayor Perry said that is excellent news.

12. REPORTS/GENERAL COMMENTS FROM TOWN COUNCIL

a.) Thank You to Staff

Councilman Pruitt thanked the manager for working with the people at Sea Dunes and others and putting together the feral cat ordinance. It will hopefully provide resolve for the homeowners.

Councilman Bateman thanked staff and the manager for a good budget. It was precise and clear and he appreciates all the hard work that went into it. He added he wants to go on record as not thinking very highly of the sponsor of House Bill 1122.

Mayor Pro Tem Garriss thanked Attorney Michael for being a friend and great attorney to the Town and providing great guidance to council and staff. His work has been appreciated.

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Mayor Perry announced Attorney Michael is going to leave the Town in July. He is going to retire and will be missed.

b.) Amicus Brief

Perry: *This came up after the agenda went out. It needs to be discussed and we need to make a decision. It has to do with a court case in Emerald Isle concerning access for the public to the beach, dry and wet sand. The Court of Appeals had favored the public but now it is going to the North Carolina Supreme Court. The Town of Emerald Isle is asking us and other coastal Towns for help in the form of an Amicus Brief and \$2,000 to file the brief and other filings in order to continue. We have always enjoyed the beach from the tow of the dune to the ocean and that was not considered private property. This case will hurt us deeply if the Supreme Court of North Carolina, or if it gets to the U.S. Supreme Court, goes against us.*

In this case we should probably put some money where our mouth is because it's for the benefit of everybody that accesses the beach. We are not talking about oceanfront property owners. We are talking about everybody but oceanfront property owners.

Also, we will instruct the manager to talk with the other local town managers and the county to find out if the brief should be done here or if we should send the money to Emerald Isle and they will do all of it. That is to be determined.

There was a council consensus to join the Amicus Brief proceedings.

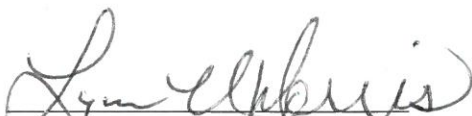
13. PUBLIC COMMENTS

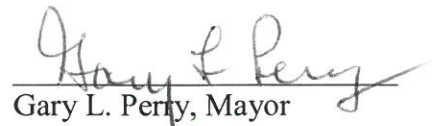
No one came forward to comment.

14. ADJOURN

MPT Garriss made a motion to adjourn. It was seconded by Councilwoman McClean and the vote was unanimous, 5-0. Time was 6:58 p.m.

These minutes were approved at the July 5, 2016 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor